NO. 83-1907

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In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM D. PELT

Defendant-Petitioner

versus

STATE OF LOUISIANA

Plaintiff-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the physical and mental condition of defendant, who had just been involved in a two vehicle collision resulting in two fatalities, is such that he can intelligently and knowingly waive his rights under the Fifth and Sixth Amendment of the United States Constitution and make an inculpatory admission or confession when the evidence shows (a) he had had surgery in the past few days, (b) had been prescribed and was probably on medication, (c) was under the influence of alcohol (according to prosecution witness), (d) was injured and (e) required medical treatment.

2. Whether the police officer should have advised the defendant of his Fifth Amendment right to silence and Sixth Amendment right to counsel under *Miranda v Arizona*, 384 US 436, 86 S.Ct. 1602, 16 L.Ed. 2nd 694 (1966) prior to questioning the defendant at the scene of the accident.

3. Whether a police officer's insistence, against defendant's wishes, that he leave the scene of the automobile accident in an ambulance and go to a hospital for medical treatment constitutes "taking the defendant into custody or otherwise depriving him of his freedom of action in any significant way" so as to trigger the need for a *Miranda* warning with respect to any contemporaneous incriminatory admissions made by the defendant in response to questions asked him by the police officer.

4. Louisiana Revised Statutes Title 14, Section 100 provides a fine of not more than $500 or imprisonment for not more than six months or both, if a person involved in a vehicle accident fails to:

stop at the scene of the accident,

give his name, address and the license number of the vehicle,

render reasonable aid, and/or

report the accident to the police.

The issue presented is whether Louisiana Revised Statutes Title 14, Section 100 by operation of law, constitutes the equivalency of custody or a "significant deprivation of defendant's freedom of action" as as to trigger the necessity of a *Miranda* warning prior to his interrogation at the scene by a police officer.

5. Whether under the sum cumulation of the conditions set forth above constitutes the legal equivalency of taking the defendant "into custody" or otherwise depriving him "of his freedom of action in any significant way" so as to necessitate police officers advising him of his *Mirada* rights prior to questioning him.

PARTIES TO THE PROCEEDING

All of the parties to these proceedins are listed in the caption of the case.

TABLE OF CONTENTS

PAGE

Questions Presented for Review i
Parties to the Proceedings iii
Table of Contents iv
Table of Authorities v
Opinions Below 1
Jurisdiction 2
Constitutional and Statutory Provisions Involved 2
Statement of the Case 3
Argument 5
Conclusion 11
Certificate 13
Appendix A A-1
Appendix B A-15

TABLE OF AUTHORITIES

Cases: **Page**

Beckwith v. United States,
425 US 341, 96 S.Ct. 1612, 48 L.Ed.2nd (1976) . . . 10

California v. Beheler,
103 S.Ct. 3417 (1983) 11

Escobedo v. Illinois,
378 US 478, 84 S.Ct. Rept. 1758 (1964) 5

Mathis v. United States,
391 US 88 S.Ct. 1503, 20 L.Ed.2nd 381 (1968) 10

Miranda v. Arizona,
384 US 435, 86 S.Ct. 1602, L.Ed.2d 694 (1966) . . 6, 9

Oregon v. Mathiason,
429 US 711 97 S.Ct. 711 (1977) 10

Orozco v. Texas,
394 US 324, 89 S.Ct. 1095, 22 L.Ed.2nd 311
(1969) 10

State v. Roach,
332 So.2d. 222. 227 (La.1975) 10

United States v. Planche,
352 F.2d 899 (5th Cir.1979) 9

Statutes:

28 U.S. Code Section 1257(3) 2

Louisiana Revised Statutes Title 14
Section 100 . . . . . 3, 5, 8, 11

Constitutions

Fifth Amendment,
United States Constitution 2, 5, 7, 9

Sixth Amendment,
United States Constitution 3, 5, 7, 8, 9

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PETITION FOR WRIT OF CERTIORARI

William D. Pelt, your petitioner, prays that a Writ of Certiorari issue to review the judgment and the decision of the Supreme Court of the State of Louisiana which affirmed a conviction of your petitioner on two counts of the offense of negligent homicide in the Thirty-Sixth Judicial District Court, Beauregard Parish, Louisiana.

OPINIONS BELOW

SUPREME COURT OF LOUISIANA. The opinion of the Louisiana Supreme Court bears the style and citation as follows: State of Louisiana vs. William D. Pelt, __ So.2d __ (La.1984). A copy of the opinion is appended to this petition and made part hereof. (See Appendix A)

THIRTY-SIXTH JUDICIAL DISTRICT COURT, BEAUREGARD PARISH, LOUISIANA. The trial judge did not write or render a general comprehensive opinion. He made an oral ruling which is found in the Louisiana Supreme Court Record, volume 3, Page 53 and 54. It is reproduced and appended to this Petition. (See Appendix B).

JURISDICTION

The original judgment and opinion of the Louisiana Supreme court was rendered and entered on February 27, 1984. (See Appendix A). Petitioner made a timely Application for Rehearing which was denied on March 23, 1984.

The jurisdiction of this Court is envoked under the provisions of 28 U.S. Code Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment, United States Constitution

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; not shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment, United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Louisiana Revised Statutes, Title 14, Section 100

Hit and run driving is the intentional failure of the driver of a vehicle involved in or causing any accident to stop such vehicle at the scene of the accident, to give his identity and to render reasonable aid.

To give his identity, for the purpose of this article, shall mean that the driver of any vehicle involved in any accident shall give his name, address and the license number of his vehicle, or shall report the accident to the police.

Whoever commits the crime of hit and run driving shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

STATEMENT OF THE CASE

On July 19, 1981, a pickup truck owned and occupied by defendant-petitioner, William D. Pelt, was being driven in a southbound direction on Louisiana Highway 27 in Beauregard Parish, Louisiana. At that same time, two

soldiers from Fort Polk, Louisiana were operating and riding a motorcycle in a northerly direction on Louisiana Highway 27. At some point, the pickup and motorcycle collided, causing both occupants of the motorcycle to be killed instantaneously. Defendant-petitioner, Pelt, received injuries. Other than the occupants of the two vehicles, there were no other known eye witnesses to the actual collision.

Pelt was indicted for two counts of violation of Louisiana Revised Statutes, Section 32 relative to Negligent Homicide, a felony under the laws of the State of Louisiana. Since there were no eye witnesses to the actual collision, in the jury trial which followed both the prosecution and defense relied on accident reconstruction expert testimony in an effort to establish in which lane of traffic the collision occurred. Additionally, the prosecution contended that Pelt was under the influence of intoxicants but did not offer any evidence of a field sobriety test, did not offer any evidence of a breathilizer test and did not offer any evidence of a blood alcohol test. The prosecution relied on the observation of some, but not all, of the persons who came to the scene of the accident and also sought to introduce certain incriminating statements made by Pelt. The defense made timely objection. (Record, Volume 3 Page 48.) After a hearing conducted outside of the presence of the jury, the trial judge ruled Pelt's statements admissible. (Record, Volume 3 pages 48-50.)

Defendant-petitioner was convicted of both counts of negligent homicide. A Motion for New Trial was filed which reurged an objection to the introduction into evidence of the incriminatory admissions. (Record, Volume 1 page 122-136.) After an adversary hearing, the trial court overruled the Motion for New Trial. (Record, Volume 4 page 1-10.) Pelt was sentenced on each count to serve five years

at hard labor in the custody of the Department of Corrections, said sentences to be concurrent. He appealed to the Louisiana Supreme Court on six Assignments of Error, one of which related to the admission of statements. The trial court's ruling was upheld by the Louisiana Supreme Court which affirmed Pelt's conviction on February 27, 1984, and denied his Application for Rehearing on March 23, 1984.

Pelt has contended that his privilege against incrimination and his rights to the assistance of counsel, as guaranteed by the Fifth and Sixth Amendments to the United States Constitution, respectively, were violated by the failure of the police officer who questioned him at the scene of the accident to advise him of his *Miranda* rights when he, Pelt, was in the legal equivalency of custody or otherwise significantly deprived of his freedom of action. He has contended, additionally, that his physical condition at the time precluded him from making an intelligent and knowing waiver of his Fifth and Sixth Amendment rights. Finally, the legal affect of Louisiana Revised Statutes, Title 14, Section 100 relative to hit and run driving significantly deprived petitioner of his freedom to depart and his freedom of action. Alternatively, the sum total of the circumstances precluded police officers from questioning Pelt without a prior *Miranda* warning.

ARGUMENT

In *Escobedo v. Illinois,* 378 US 478, 84 S.Ct. Rept. 1758 (1964), the United States Supreme Court held that:

> "when the process shifts from investigatory to accusatory—when its focus is on the accused and its purpose is to illicit a confession, our adversary system begins to operate, and, under the

> circumstances here the accused must be permitted to consult with his lawyer." 84 S.Ct. Rept. at 1766.

In the landmark case of *Miranda v. Arizona*, 384 US 478 86 S.Ct. 1602 (1966) the United States Supreme Court in deciding four cases before it distilled the following rule of law, to-wit:

> "To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." *Miranda v. Arizona*, 384 US 478 86 S.Ct. Rpt. 1602 at 1630.

The pertinent inquiries are at least twofold. First, does there exist facts which preclude the defendant from having made a knowing and intelligent waiver of his Fifth and Sixth Amendment rights? Secondly, do the sum cumulation of existing circumstances constitute a situation in which petitioner-defendant was in the legal equivalency of custody or do these circumstances constitute a situation in which he was "otherwise deprived of his freedom by the authorities in any significant way"?

At the scene of the accident, and before petitioner had received medical treatment, Trooper Hank Larkin put certain questions to him. According to Trooper Larkin, the questions and answers were as follows:

> "Q. Didn't you see them?
>
> A. Yes.
>
> Q. Had you been drinking?
>
> A. He said he had been drinking."
>
> (See Record Vol. 3 page 52)

Absolutely no *Miranda* warning had been given. The Louisiana Supreme Court in its opinion in this case stated:

> "Pelt, was not deprived of his freedom or restricted in any way. Although Trooper Larkin requested that Pelt go to the hospital, there was no element of coercion."

It is respectfully submitted that these statements are not substantiated by the law or evidence in the case. It is urged that Pelt was both legally and factually deprived of his

freedom and restricted. Additionally, there was a legal element of coercion. Louisiana Revised Statutes Title 14, Section 100 provides that the driver of a vehicle involved in or causing any accident must stop his vehicle at the scene of the accident, give his identity and render reasonable aid. Moreover the statute requires that he shall report the accident to the police. Thus, Pelt was required to remain at the scene of the accident until being released by the police officer. Moreover, according to the testimony of Trooper Larkin on cross examination, Pelt did not want to go to the hospital but Trooper Larkin *insisted* that he do so. (See Record Volume 3 page 59.)

At the hospital, another police officer, Carl Leonard, asked the defendant if he would submit to a blood test and insisted that he respond yes or no over the request that he be permitted to talk to a lawyer first. (See Record Volume 3, page 128).

Thus, by law, the petitioner's liberty had been restrained to the scene of the accident, he was transported from the scene of the accident to the hospital over his objections and at the *insistence* of the police officer who had questioned him without a prior *Miranda* warning. At the hospital the petitioner's rights under the Sixth Amendment of the United States Constitution were further violated in that he was required to answer questions put to him concerning whether he would voluntarily submit to a blood test notwithstanding the fact that he had requested to consult with his attorney first.

It is worth observing at this point that the law officers were dealing with a man who had recently undergone surgery, was under medication, had been involved in a serious accident, and in the opinion of the officer at the

scene was in need of medical treatment. Significantly, the officer who questioned Pelt at the scene without giving him his *Miranda* rights was on the conclusion that he ws intoxicated at the time. Additionally, the officer testified that Pelt smelled of alcohol, that his speech was incoherent, he was unsteady on his feet, and he weaved. (See Record Volume 3, page 56.)

Further, a nonpolice witness who came on the scene after the accident indicated that Pelt looked like he was in shock and like he was hurt. (See Record Volume 3, page 11 and 12.) Petitioner was hardly in a position to make an intelligent waiver of the Sixth and Fifth Amendment Rights which waiver is necessary in order for his statement to have been introduced into evidence.

Factors relevant in determining whether an interrogation is custodial and thus one subject to the *Miranda* requirements include the probable cause of arrest, the subjective intent of the police, the subjective belief of the defendant, and the subjective belief by both the defendant and the police that the defendant is the focus of the investigation. *United States v. Planche,* 352 F.2d 899 (5th Cir. 1979).

Miranda v. Arizona, supra., essentially held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrigation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. 384 US at 444, 86 S.Ct. at 1612. By "custodial interrogation," the *Miranda* court meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 US at 444,

86 S.Ct. at 1612. See *Beckwith v. United States,* 425 US 341, 96 S.Ct. 1612, 48 L.Ed. 2nd (1976); *Orozco vs. Texas,* 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed. 2nd 311 (1969); *Mathis v. United States,* 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed. 2nd 381 (1968). Thus, it is clear that the constitutional warnings are required in "situations falling short of a formal placing in arrest...in which the accused may be said to be under custody or significant restraint." See *State v. Roach,* 332 So.2d 222, 227 (La.1975).

The Louisiana Supreme Court cited and relied on the case of *Oregon vs. Mathiason,* 429 US 711 97 S.Ct. 711 (1977). However, the sum cumulation of circumstances in Pelt's case clearly distinguishes it from *Oregon v. Mathiason, supra.* Mathiason "was immediately informed that he was not under arrest," 429 US at 495, 97 S.Ct. at 714. No one informed Pelt that he was not under arrest prior to the giving of the statements. In fact, the officer insisted that he be transported to the hospital over Pelt's objections. There is nothing to indicate that Mathiason had had recent surgery. However, according to the trial judge in Pelt's case, just two days before the accident, Pelt had undergone a surgical procedure to widen his mouth and had been given a prescription for Demerol for relief of pain as well as a prescription for an antibiotic. (See Record Volume 4, page 6 at transcript of sentencing.) In the *Mathiason* case, the officers scheduled the appointment for the interview with Mathiason at a time that the two of them mutually agreed upon. In the Pelt case, the interrogation took place at the scene of the accident, prior to Pelt's having received the medical treatment and contemporaneously with the officers' insistance that Pelt be transported to the hospital in the ambulance. Additionally, there is no indication that Mathiason had been drinking. There is testimony that the officer who questioned Pelt believed he was intoxicated at the time.

The Louisiana Supreme Court also cited *California v. Beheler*, 103 S.Ct. 3517 (1983). This case is also distinguishable. Beheler voluntarily agreed to accompany police to the station house for the purpose of being questioned. He was specifically told that he was not under arrest. Pelt did not voluntarily agree to accompany the officers anywhere for the purpose of questioning. He was not told (like Beheler and Mathiason) that he was not under arrest. Beheler had not been in an automobile accident as had Pelt nor was there any evidence that Beheler had been involved in surgery within the previous two days or under prescription medicine at the time. Moreover, there is no showing that either Mathiason or Beheler were, like Pelt, subject to a statute with the same effect as Louisiana Revised Statutes Title 14, Section 100 which required them to (a) remain at the scene of the accident (offense) (b) render reasonable aid, (c) give their identity, name, address and license number of vehicle and/or (d) report the accident (offense) to the police. Thus, neither were factually or by operation of law restrained of their freedom of action in the same manner and to the same degree as was Pelt at the time the police officer questioned him and obtained incriminating admissions in the absence of a *Miranda* warning.

CONCLUSION

Statements illicited from petitioner were obtained without the constitutional safeguards which are required. They should have been excluded and this error requires reversal. For the reasons hereinabove advanced, it is respectfully submitted that the decision of the Court below is erroneous, and that the present petition for writ of certiorari should be granted.

Respectfully submitted:

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CERTIFICATE

I certify that three copies of the foregoing Application have been served upon the opposing counsel: William J. Guste, Jr., Attorney General State of Louisiana, State Capitol, Baton Rouge, Louisiana; William C. Pegues, III District Attorney, Thirty-Sixth Judicial District Court, Parish of Beauregard, DeRidder, Louisiana pursuant to Rule 28.5 (B), by placing same in the United States Mail, properly addressed with sufficient postage affixed thereto.

Alexandria, Louisiana this 21st day of May, 1984.

J. MICHAEL SMALL

APPENDIX "A"

SUPREME COURT OF LOUISIANA

NO. 82-KA-2335

STATE OF LOUISIANA

VERSUS

WILLIAM D. PELT

ON APPEAL FROM THE THIRTY-SIXTH JUDICIAL DISTRICT COURT, PARISH OF BEAUREGARD, HONORABLE L. H. COLTHARP, JR., JUDGE

DATE OF OPINION—FEBRUARY 27, 1984

REHEARING DENIED—MARCH 23, 1984

WATSON, Justice.

Defendant, William D. Pelt, was convicted by a six member jury of negligently killing Daniel R. Reynolds and LaVaughn J. Johnson in violation of LSA-R.S. 14:32.[1] Defendant was sentenced to five concurrent years on each

[1] LSA-R.S. 14:32 provides:

"Negligent homicide is the killing of a human being by criminal negligence.

"The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence.

"Whoever commits the crime of negligent homicide shall be imprisoned with or without hard labor for not more than five years, fined not more than five thousand dollars, or both."

charge and has appealed his convictions and sentences, assigning six errors by the trial court.

FACTS

The accident occurred on Sunday, July 19, 1981, while defendant was driving his blue and white pickup truck south on the Singer Highway in Beauregard Parish. There were no direct witnesses, but Mr. and Mrs. Gilbert Perkins had been traveling in the same direction immediately prior to the accident and observed the blue and white pickup go partially off the highway on the right hand side twice, and then completely off the highway on the left hand side of the road. Gilbert Perkins slowed down after observing the erratic path of the blue and white truck and the distance between the two vehicles lengthened. The truck disappeared around a curve to the left. Three or four minutes elapsed between the Gilberts' last sight of the truck and their arrival at the accident scene where they observed a motorcycle and two bodies on the left hand side of the road. The blue and white pickup truck was in a field on the left beyond the motorcycle. According to Mr. Perkins, defendant Pelt appeared to be in shock. According to Mrs. Perkins, he was "staggering". (Tr. 38)

Trooper Edwin A. Larkin, a twenty year veteran of the state police, arrived at the scene at approximately 5:35 P.M. The accident occurred about six miles south of DeRidder on Louisiana 27 at mile post 126.8. A vehicle traveling south would negotiate a left hand curve nine hundred to a thousand feet before reaching the site of the accident. The motorcycle was in the east ditch. The male and female bodies were badly disfigured and showed no signs of life.

The victims, Daniel R. Reynolds and LaVaughn R.

Johnson, were both stationed at Fort Polk. He was twenty-one and she was twenty-two. He had a bag of marijuana in one sock. A marijuana smoking device was discovered eight to ten feet from the motorcycle.

The motorcycle had come to rest approximately ten feet east of the blacktopped surface of the highway, and the pickup truck was in a field one hundred and twenty-one feet east of the highway, and a hundred feet south of the motorcycle. The truck left fifty-two feet of skidmarks before it left the blacktop. It rolled over in the field during the last thirty-three feet of travel and landed upright. The debris was in the northbound lane of travel and the east ditch. There was a large oil spot on the east edge of the northbound lane.

Trooper Larkin was obtaining information from the pickup truck when the ambulance driver told Larkin that "[t]his fellow up here wants to talk to you before he leaves." (Tr. 51) Trooper Larkin went over to the ambulance and defendant repeatedly said "I want to talk to you", (Tr. 51) but did not add anything else. Trooper Larkin had known defendant Pelt for ten to fifteen years. He called Pelt by name and asked: "[d]idn't you see them?" And Pelt replied, "Yes". (Tr. 52) Because of an alcoholic odor, Trooper Larkin asked: "[h]ave you been drinking?" and Pelt replied that he had been drinking. Because he was worried about Pelt's physical condition, Trooper Larkin did not detain him further, did not give him any *Miranda* warnings, or a sobriety test. In Trooper Larkin's opinion, Pelt was under the influence of alcohol, because of "[t]he smell of alcohol, he was unsteady on his feet, he weaved, his speech was incoherent" and he kept repeating himself. (Tr. 56) The ambulance attendant had been trying to get Pelt to go to the hospital and Trooper Larkin told Pelt to go on to

the hospital and he would talk to him there, whereupon Pelt left with the ambulance.

Trooper Larkin saw Pelt at the Beauregard Memorial Hospital approximately an hour later in one of the emergency rooms. Pelt was given his rights, but he was advised not to answer any of Trooper Larkin's questions and did not do so.

The ambulance driver, George A. Langford, testified that he could smell alcohol on Pelt, that Pelt's eyes were glassy and bloodshot, and that he was swaying back and forth. From his experience as an ambulance driver over a period of five years, he felt that Pelt was intoxicated. Pelt's only apparent injury was a laceration underneath his chin which was bandaged. Langford asked Pelt if he were on any medication and Pelt said he was not. He walked into the hospital without assistance.

Nellene Brown, an LPN at the Beauregard Memorial Hospital, testified that Pelt walked in with the ambulance attendant and immediately asked to make a telephone call. She recorded on the out-patient form that Pelt said he was not on any type of medication. Pelt had the odor of alcohol, but refused twice to take a blood test. After Pelt's phone call a friend arrived, Ms. Barbara Bremner.

Officer Carl Leonard of the DeRidder Police Department went to the Beauregard Memorial Hospital, explained Pelt's rights to him, and asked Pelt if he would submit to a blood test. Ms. Bremner responded: " 'Well, just wait a minute' ", or " 'Let me talk to a lawyer' ". (Tr. 128) Pelt refused to take the blood test. Leonard had known Pelt approximately ten years and had been a police officer for over five years. He dealt with intoxicated people on a regular

basis. In his opinion, Pelt's odor of alcohol, slurred speech, belligerence and disorientation indicated that Pelt was intoxicated.

Dr. Rene' Dugas' who was working in the emergency room that day, testified that Pelt had an odor of alcohol, "his fine coordination was very poor. His speech was slurred. He was very loud, very obtrusive, and cursed both me and the nurse on initial exam. He did not want treatment. He thought his laceration was very minimal and did not require treatment of any type. I talked to him at length again to convince him that the lesion could be—would heal much quicker if it were closed initially and not left open. He again refused treatment at that time. I questioned him as to the extent of his other injuries to try to ascertain if he had any serious injuries that needed emergency treatment, whether he was in a condition to evaluate his medical state. I was unable to get much information as far as speed of the wreck, what kind of trauma he might have received." (Tr. 138) Dr. Dugas, along with the other witnesses, testified that Pelt showed no remorse or even comprehension about the two deaths. Dr. Dugas said that he has had many contacts with intoxicated people in his emergency practice. In his opinion, Pelt was "very intoxicated". (Tr. 140) Dr. Dugas said that the effects of Demerol could be confused with those of alcohol.

Another doctor, Dr. William F. Krooss, saw Pelt at the latter's request in the emergency room and sutured his lacerated chin. Dr. Krooss recorded on the hospital records his impression that Pelt was inebriated. Pelt seemed completely unconcerned about the other people involved in the accident. Dr. Krooss went to the scene of the accident as acting coroner. In his opinion, both victims died almost instantaneously. The massive injuries were on their left

sides. Dr. Krooss testified that the effects of Demerol can resemble intoxication and that Demerol can intensify the effects of alcohol.

Trooper John Blunschi testified as an expert in the field of accident reconstruction that the impact obviously took place in the northbound lane of travel. In other words, the truck was traveling in a straight line in the wrong lane of traffic and did not swerve into that lane. The initial impace was two to two and a half feet from the eastern edge of the paved surface in the northbound lane.

William LeFevre, a consulting engineer in the field of crash analysis with impressive qualifications, testified as an expert witness in accident reconstruction on behalf of defendant Pelt. In his opinion, the pre-impact speed of the truck was 43.9 miles per hour and that of the motorcycle 56.6 miles per hour. According to his reconstruction, the motorcycle was in the southbound lane of travel, the truck's lane, one second prior to the impact and the Pelt vehicle was in its proper lane of travel.

Ms. Bremner, who testified that she and Pelt had a brother-sister relationship, had taken him to Shreveport on July 17, 1981, where he had reconstructive surgery at Schumpert Hospital to correct disfigurement caused by previous cancer surgery. They returned to DeRidder after the surgery and she had a Demerol prescription filled for Pelt. She stayed with him on July 17 and 18 and observed him take the Demerol regularly, the last time being 11:00 P.M. on July 18. She testified that he was in considerable pain. According to the druggist, there were no warnings on the Demerol bottle against ingesting alcohol. Barbara Bremner was not sure whether she saw Pelt the next morning, the day of the accident, but she did talk to him on the

telephone between 2:00 and 3:00 P.M. that Sunday afternoon. He was working at his restaurant, The Oaks. According to Ms. Bremner, Pelt's appearance and speech were altered by the surgery because his mouth area was swollen and bandaged. In her opinion Pelt was not intoxicated in the emergency room, but in a state of shock. He was worried about damage to the surgical area.

The medical records at Schumpert reflect that Pelt was released in ambulatory condition to a friend on July 17, 1981. He was discharged with prescriptions for Demerol and Vibramycin after mouth surgery.

Defendant's investigator, Spencer Duane Baldwin, took the photograph introduced in evidence as Exhibit D-14, and identified the front tire of the motorcycle in that photograph. Baldwin marked the rear portion of the front tire with a red "X". According to Mr. LeFevre, Mr. Baldwin was in error on that point. Although Mr. LeFevre had not seen the motorcycle, he was confident about his testimony. Trooper John Blunschi testified in rebuttal that he had examined the motorcycle and that Baldwin was correct in identifying the rear portion of the front tire.

In denying a new trial, the trial court concluded that there was more than ample evidence to justify the jury's verdict.

ASSIGNMENT OF ERROR NUMBER ONE

Defendant contends that the trial court erred in allowing the introduction of Pelt's statement to Trooper Larkin in the absence of any *Miranda* warnings and argues that the statement was not free and voluntary.

In determining whether a suspect is "in custody for purposes of receiving of *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, __ U.S. __ at __, 103 S.Ct. 3517 at 3520, __ L.Ed.2d __ at __ (1983) quoting Oregon v. Mathiason, 429 U.S. 492 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). There are significant similarities between Beheler's case and Pelt's. Pelt, like Beheler, initiated the brief conversation. Both had been drinking. Although Beheler's interview took place at the station house, he, like Pelt, was not deprived of his freedom or restricted in any way. Although Trooper Larkin requested that Pelt go to the hospital, there was no element of coercion. The conversation took place in a noncustodial situation. The evidence shows that Pelt's statement was free and voluntary and not induced by fear, threats, or promises. LSA-R.s. 15:451; State v. Neslo, 433 so.2d 73 (La.,1983); State v. Mitchell, 437 So.2d 264 (La.,1983).

This assignment lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO

Defendant contends that the trial court erred in refusing to allow testimony by Trooper Larkin concerning ticket stubs found on the decedents which indicated that they may have attended a rock concert in Houston, Texas, that weekend.

Revelant evidence is defined in LSA-R.S. 15:441 as follows:

> "Relevant evidence is that tending to show the commission of the offense and the intent, or

tending to negative the commission of the offense and the intent.

"Facts necessary to be known to explain a relevant fact, or which support an inference raised by such fact, are admissible."

The relevancy of evidence must be determined by the purpose for which it is offered. LSA-R.S. 15:442.[2] At the time the ticket stubs were offered, during Trooper Larkin's testimony, defendant's attorney argued that the tickets would show that the couple was traveling from Houston and therefore might have been tired and driving in an erratic manner.

The ticket stubs had little or no probative value. It might have been inferred that the decedents had attended the concert. However, attendance at a concert in Houston on Friday or Saturday did not support an inference about their physical condition that Sunday. The ticket stubs had no bearing on the cause of the accident in which they were killed.

The trial court correctly ruled that the ticket stubs were not material or relevant, particularly at the time they were offered in evidence. There was no abuse of discretion. State v. Stramiello, 392 so.2d 425 (La.,1981).

This assignment lacks merit.

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[2] LSA-R.S. 15:442 provides:

"The relevancy of evidence must be determined by the purpose for which it is offered; and when evidence has been excluded when offered for one purpose, but admitted when offered for another, its effect must be restricted to the purpose for which admitted, but no one can be heard to establish a fact for one purpose and deny it for another."

ASSIGNMENT OF ERROR NUMBER THREE

Defendant argues that the trial court erred in allowing Trooper Blunschi to testify as an expert witness when he was not qualified to do so and his testimony was not based on original investigation.

Trooper Blunschi testified that he had been employed with the Louisiana State Police since July of 1967 and had been involved in accident investigation on a daily basis during that time except for periods of schooling. He has the equivalent of an associate degree in law enforcement from Memphis State University and completed the Louisiana State Police Training Academy in Baton Rouge in 1968. In 1971, he attended Northwestern University of Illinois at Chicago for a year's specialized training in accident investigation and reconstruction, and successfully completed those courses. After his return to Louisiana in 1972, he taught accident reconstruction and accident investigation at the State Police Training Academy in Baton Rouge until 1981. He has qualified to testify as an expert witness in several other criminal cases.

Trooper Blunschi's qualifications were considered in State v. Sherer which stated that "the officer possessed sufficient education and practical experience as an expert in accident reconstruction." 411 So.2d 1050 at 1054 (La.,1982). There was no error in the trial court allowing Trooper Blunschi to testify as an expert.

This assignment lacks merit.

ASSIGNMENTS OF ERROR NUMBER FOUR AND FIVE

Defendant contends that the circumstantial evidence of his guilt does not exclude every reasonable hypothesis of innocence, as required by LSA-R.S. 15:438, and, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could not have concluded beyond a reasonable doubt that he was guilty. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

The evidence of defendant's guilt is extremely convincing.[3] Considering the physical evidence, the Perkins' testimony and Trooper Blunschi's testimony, a rational trier of fact could easily have concluded that the accident occurred when Pelt cut the corner of the left curve into the wrong lane of traffic after weaving drunkenly down the highway.

On the day of the accident, Pelt denied taking any medication; evidence that he had a prescription which he had been taking that Friday and Saturday does not establish that he was taking Demerol when this accident occurred. Even granting that his intoxicated condition resulted from a combination of Demerol and alcohol, rather than alcohol alone, driving in his condition amounted "to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances." LSA-R.S. 14:12. There was no evidence that his intoxicated condition was involuntary so as to exempt him from criminal responsibility. LSA-R.S. 14:15(1).

Every reasonable hypothesis of innocence was excluded and, viewing the evidence in the light most

[3] Even if defendant's expert was correct in stating that the accident occurred in defendant's lane of travel, which is unlikely, Pelt's erratic driving immediately before the collilsion and his intoxicated condition indicate that he negligently caused the deaths of the two victims.

favorable to the prosecution, a rational trier of fact could have concluded beyond a reasonable doubt that defendant was guilty. State v. Parker, 425 So.2d 683 (La.,1983).

These assignments lack merit.

ASSIGNMENT OF ERROR NUMBER SIX

Defendant contends that five years at hard labor on each count is an excessive sentence, because this is his first offense and he received the maximum possible sentence for a single count of negligent homicide.

Defendant was sentenced to concurrent terms of imprisonment which is in line with the provisions of LSA-C.Cr.P. art. 883 when two offenses are based on the same act. However, the trial court could have given Pelt consecutive sentences. State v. Ortego, 382 So.2d 921 (La.,1980), U.S. cert. denied 449 U.S. 848, 101 S.Ct. 135, 66 L.Ed.2d 68; State v. Molinario, 400 So.2d 596 (La.,1981); State v. Farria, 412 So.2d 577 (La.,1982). In addition, the trial court could have fined Pelt up to $5,000 on each charge.

The trial court noted that defendant is forty-one years of age and a substantial business man in DeRidder, a building contractor and the proprietor of the Oaks Restaurant. Defendant has never married and has no dependent. He has had lip cancer, first diagnosed in 1971 and recurring in 1981. A pathology report on December 12, 1981, indicated no evidence of malignancy. The trial court concluded that the problem was not life threatening.

Defendant was involved in an automobile accident in Natchitoches Parish in December, 1964, that resulted in

the death of a nine year old child. Although Pelt was charged with negligent homicide, the Natchitoches Parish grand jury returned a no true bill. Even though there was no indictment resulting from that accident, the trial court concluded that it should have made defendant a more careful and concerned driver. On the contrary, defendant has a history of traffic and D.W.I. offenses. He was convicted of driving while intoxicated in Shreveport, Louisiana, on March 16, 1973, and received a fine. On April 23, 1974, defendant was charged in Leesville with driving while intoxicated, but the charge was reduced to careless and reckless operation of a vehicle. He forfeited the bond. On July 17, 1974, defendant was again charged with driving while intoxicated, this time in DeRidder. He was also charged with driving without a driver's license. He paid another fine. On December 27, 1979, Pelt received a ticket for failing to maintain control of his vehicle, which left the highway and hit another vehicle. He paid a fine. In January of 1980, defendant was again cited for driving which intoxicated. The charge was reduced to careless and reckless operation and Pelt forfeited his bond.

The trial court concluded that Pelt's record, which included other minor traffic offenses, strongly suggested that he would ultimately cause the type of tragic accident which occurred here. Defendant had had lenient treatment for his past offenses but had not been deterred from drinking and driving. A suspended sentence and probation could not be justified in view of the seriousness of the crime and defendant's past disregard for the dangers of driving under the influence of alcohol. The court concluded that incarceration was necessary to deter future misconduct.

The trial court thoroughly considered all of the mitigating and aggravating factors mandated in LSA-C.Cr.P.

art. 894.1 in imposing the sentence. The sentence is not facially excessive in view of defendant's record. It is not grossly disproportionate to the offenses. State v. Sweeney, No. 82-KA-1913, __ So.2d __ (La.,1983).

This assignment lacks merit.

For the foregoing reasons, the convictions and sentences of defendant, William D. Pelt, are affirmed.

AFFIRMED.

APPENDIX "B"

RULING OF HONORABLE L. H. COLTHARP, JR.
JUDGE OF THE THIRTY-SIXTH JUDICIAL DISTRICT
EXTRACTED FROM TRANSCRIPT IN RECORD
AT VOLUME 3, Pages 53 and 54

36TH JUDICIAL DISTRICT COURT
PARISH OF BEAUREGARD
STATE OF LOUISIANA

NO. CR-504-81

STATE OF LOUISIANA

VS.

WILLIAM D. PELT

BY THE COURT:

All right, the Court is going to overrule the objection. The Miranda warnings as required by the United States Supreme Court in the case of *Miranda versus Arizona* relate to custodial interrogation by law officers, and I have read the case of *State versus Seegers*, 355 So.2d 238, a Louisiana Supreme Court case, where the question of custodial interrogation was at issue and the Louisiana Supreme Court states that in this state, as it is in, I think, all the states in the United States only in cases where the defendant has been detained in some fashion, taken into custody by law officers and made the target of investigation, that the Miranda warnings are required. So the Court is going to overrule the objection of the defendant and you may note your—

BY MR. STEWART:

I'd ask at this time that the Court note our exception to the Court's ruling.

BY THE COURT:

Yes, let the record reflect that the objection and exception is made to the Court's ruling by the defendant. That objection will be noted. But it is overruled for the reasons stated.